IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.531 OF 2003

The Shipping Corporation of India Ltd. ... Petitioners

v/s

Mare Shipping Inc. ... Respondents

Mr V.C. Kotwal with Mr C.S. Balsara, Mr Kunal Shah i/b

M/s Bhatt and Saldanha for Petitioners.

Mr P.S. Pratap with Ms Monica Kohli for Respondents.

CORAM : D.K. DESHMUKH J.

DATE : 24TH OCTOBER 2005.

P.C. :-

1. By this petition, the petitioners challenge the award made by the Arbitrators. Admitted position is that the vessel was ordered to discharge at Vadinar Port. According to the respondents, the vessel on reaching that Port, gave notice on 15th December 1999. The vessel could not discharge its cargo there and therefore, it was taken to Mumbai Port where the cargo was discharged. The question to be decided by the Arbitral Tribunal was whether the respondents are entitled to demurrage from the date of the notice of readiness given at Vadinar or from the date when the notice of the readiness was given at Mumbai Port. The Arbitral Tribunal by the award dated 26th August 2003 held that the respondents are entitled to get demurrage on the basis of notice given at Vadinar Port. When the matter was argued before me on earlier occasion, on finding that there is considerable support in the submission made on behalf of the petitioners that the notice dated 15th December 1999, which according to respondents was sent to the common agent, has not been proved, an order was made on 25th April 2005 under section 34(4) of the Arbitration and Conciliation Act 1996 and the Arbitral Tribunal was directed to resume the proceedings to enable the parties to lead evidence.

Accordingly, the Arbitral Tribunal resumed the proceedings, allowed the parties to lead evidence and made the award. The Arbitral Tribunal held that the vessel had given notice of readiness at Vadinar on 15th December 1999 and therefore, the respondents are entitled to claim demurrage on the basis of that notice. I have heard learned counsel for both the sides. The learned counsel appearing for petitioners submits that the notice of readiness which is alleged to have been issued by the vessel m.t. Prestige was given through the common agent. According to the learned counsel, the common agent had issued a letter wherein it was stated that through the e-mail which has been sent by Capt. Jude D'Souza on behalf of the common agent, does not show that any attachment was sent. The case of the respondents was that the notice of readiness issued on 15th December 1999 was received by the common agent of the parties. In support of that case, the respondents examined Mr Sunil D'Souza who stated that alongwith the e-mail dated 8th July 2003 from Capt. Judge D'Souza, he received the copy of notice of readiness issued by the vessel at Vadinar. The learned counsel appearing for respondents also pointed out that the document dated 16th December 1999 which was a notice of readiness issued by the common agent on behalf of the petitioners to the Indian Oil Corporation shows that the common agent had received the notice of readiness dated 15th

December 1999 from the vessel. The Arbitral Tribunal, after watching the demeanour of witness has held that the said witness of respondents seems to be a reliable witness and that witness has in terms stated that alongwith e-mail dated 8th July 2003, he received a copy of the notice of readiness dated 15th December 1999. Therefore, it is clear that the common agent had received the notice of readiness. Perusal of the notice, date and time shows that it was received by the common agent. Therefore, I find that the finding of fact which is recorded by the Arbitral Tribunal that the notice of readiness was issued by the vessel to the common agent on 15th December 1999 is in any case a possible finding. Apart from it being a possible finding, it is also a finding of fact for which I find considerable material available on record. Thus, as I find that there is definite evidence on record to prove that the notice of readiness was given by the vessel at Vadinar Port, the Arbitral Tribunal was justified in awarding demurrage on the basis of the notice of readiness issued by the vessel on arrival at Vadinar Port. In the result therefore, petition fails and is dismissed. The petitioners are directed to pay costs of this petition to the respondents as incurred by the respondents.

2. At this stage, a request is made for stay of

operation of this order. in my opinion, no such order is necessary because as a result of dismissal of the petition, the award made by the Arbitral Tribunal will be converted into a decree which will be a money decree and therefore, in my opinion, it would not be appropriate to stay execution of money decree. The request is rejected.

. Parties to act on the copy of this order duly authenticated by the Associate / Personal Secretary as true copy.

. Certified copy expedited.